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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/035,166	01/04/2002	Bevely Roberts	85658-001	1763

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EXAMINER

EREZO, DARWIN P

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 08/07/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

EC

Office Action Summary

Application No.

10/035,166

Applicant(s)

ROBERTS, BEVELY

Examiner

Darwin P. Erez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 9 and 10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 11-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,3. 6) ☐ Other:

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Group 1 in Paper No. 5 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-6 and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,335,656 to Bowe et al.
4. As to claim 1, Bowe teaches an apparatus comprising a first cannula **14** having a distal end adapted to be received at a first depth in, for delivering a fluid into a nostril of the patient; and a second cannula **16** having a distal end adapted to be received at a second depth in for sampling exhaled fluid from the nostril.
5. As to claim 2, Bowe teaches the first depth and the second depth each range up to 3 cm since Bowe teaches the depth could range up to about 5 cm (col. 9, line 48).
6. As to claim 3, Bowe teaches the second depth being equal to the first depth.

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7. As to claim 4, Bowe teaches a port **20** to connect the first cannula to a fluid supply.
8. As to claim 5, Bowe teaches a port **22** to connect the second cannula to a fluid analyzer.
9. As to claim 6, Bowe teaches the distal end of the first and second cannula having an aperture.
10. As to claim 11, Bowe teaches a method of delivering inhalant to and monitoring exhaled fluid from a patient comprising inserting to a first depth a distal end of a first cannula **14** in for delivering a fluid into a nostril of the patient; and inserting to a second depth a distal end of a second cannula **16** in for sampling exhaled fluid from the nostril.
11. As to claim 12, Bowe teaches the first depth and the second depth each range up to 3 cm since Bowe teaches the depth could range up to about 5 cm (col. 9, line 48).
12. As to claim 13, Bowe teaches the second depth being equal to the first depth.
13. As to claim 14, Bowe teaches the distal end of the first and second cannula having an aperture.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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15. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bowe et al. and US 4,446,869 to Knodle.

16. As to claims 7 and 8, Bowe is silent with regards to a moisture trap connected to the first or second cannula. Knodle teaches that it is known for a cannula to have a moisture trap (col. 1, lines 7-45). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention to add a moisture trap to the device of Bowe, as disclosed by Knodle, because a moisture trap helps provide a more accurate reading for the fluid analyzer by eliminating the moisture in the exhaled air.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darwin P. Erez who's telephone number is (703) 605-0420. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

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dpe

July 25, 2003

A handwritten signature in black ink, appearing to read 'Weilun Lo', with a stylized, cursive script.

WEILUN LO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700